

AMENDED IN ASSEMBLY APRIL 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1426

Introduced by Assembly Member Steinberg
(Coauthors: Senators Ducheny and Dunn)

February 21, 2003

An act to add and repeal Chapter 4.6 (commencing with Section 65965) ~~to~~ of Division 1 of Title 7 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1426, as amended, Steinberg. Affordable housing: greater Sacramento region.

Existing law requires the Department of Housing and Community Development, the California Housing Finance Agency, and various other state and local agencies to administer programs to provide affordable housing through incentives to developers, rental housing assistance, and loans or grants for downpayment, interest subsidy, relocation, veterans' programs, and other home purchase assistance. Existing law requires the housing element of a local general plan to identify adequate sites for affordable housing to be made available through appropriate zoning and development standards, including those relating to density.

This bill ~~authorizes every city and every county within the greater Sacramento region to enter into a joint powers agreement to meet the requirements of the bill prior to January 1, 2005. If the cities and counties that comprise 80% of the region's population agree by that date to meet the requirements, then this bill would only apply to those cities~~

~~and counties. If they do not agree by that date, then this bill~~ would require, *except as specified*, every city and every county within the greater Sacramento region, as defined, that issues building permits for residential units to require or otherwise cause at least 5% of the aggregate amount of these new residential units to be affordable to, and occupied by, very low income households, and at least 5% of the aggregate amount of these new residential units to be affordable to, and occupied by, low-income households, as specified. It would require each city and each county in the region to prepare and submit to the California Tax Credit Allocation Committee an annual report with specified information and would require the committee to, no later than December 31, 2008, submit a report to the Legislature regarding the number of affordable residential units in the region. By increasing the duties imposed on local officials, this bill would impose a state-mandated local program.

This bill would, among other things, authorize the establishment of a joint powers agency to be known as the Greater Sacramento Regional Consortium and require the Department of Housing and Community Development to allocate specified funds to the consortium pursuant to factors determined by the department.

~~This bill would require, in any action to challenge the validity of a decision by a city or county that meets the affordable housing requirements of the bill to zone land consistent with its housing element, and in any action to challenge the approval, by a city or county that meets the affordable housing requirements of the bill, of a development project for persons or households of low and moderate income with units that would count toward these requirements, the decision or approval to be upheld if it is consistent with, and in promotion of, the statewide goal of a sufficient supply of decent housing to meet the needs of all residents of this state unless specified findings are made.~~

~~This bill would require in any action to challenge the validity of a decision or this approval of a development project, an award of reasonable costs and reasonable attorney's fees to a city, county, or city and county if a court finds that the decision or approval is consistent with, and in promotion of, this goal upholds the approval.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide



and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 4.6 (commencing with Section 65965) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 4.6. GREATER SACRAMENTO REGION HOUSING
DEVELOPMENT ~~APPROVALS~~

Article 1. Affordable Housing Production

~~65965. (a) (1) Each city and each county within the greater Sacramento region may enter into a joint powers agreement to meet the requirements of this chapter. If the cities or counties in the region that comprise 80 percent of the region's population agree to meet the requirements of this chapter prior to January 1, 2005, then this chapter shall, notwithstanding any other provision, only apply to those cities and counties. If the cities or counties in the region that comprise 80 percent of the regions population do not agree to these requirements before January 1, 2005, then on and after that date,~~

65965. (a) (1) On and after January 1, 2005, each city and each county within the greater Sacramento region that issues building permits for residential units shall require or otherwise cause, by contract or covenants running with the land, at least 5 percent of the aggregate amount of these new residential units to be affordable to, and occupied by, very low income households, and at least 5 percent of the aggregate amount of these new residential units to be affordable to, and occupied by, low-income households. Each city and each county shall meet the requirements of this subdivision either on an annual basis or, in the aggregate, over a three-year period.

1 (2) Residential rental units required or caused to be affordable
2 pursuant to this paragraph shall remain affordable for at least 30
3 years. The city or county shall have the right of first refusal to
4 purchase or repurchase owner-occupied residential units that are
5 affordable pursuant to this paragraph and shall recapture any
6 subsidy at the time of sale. The home seller shall retain the amount
7 that represents the value of improvements and the seller's
8 proportionate share of appreciation. Any recaptured subsidy shall
9 be segregated and used strictly for residential development at the
10 same income level as, or at a lower income level than, the income
11 category of the development from which the subsidy was
12 recaptured. A jurisdiction that chooses to meet the requirements in
13 the aggregate over a three-year period may, for purposes of its first
14 report, include the number of building permits for residential units
15 issued over a three-year period that begins the year prior to when
16 the requirements of this chapter became applicable to the
17 jurisdiction.

18 (3) A city or county may count the following existing
19 residential units toward not more than 10 percent of the very low
20 income and 10 percent of the low-income requirements of
21 paragraph (1):

22 (A) Substantially rehabilitated units *that are certified for*
23 *occupancy after January 1, 2005.*

24 (B) Residential units affordable to, and occupied by, extremely
25 low, very low, or low-income households pursuant to federal
26 regulatory agreements that are expiring or have expired if the
27 jurisdiction requires or otherwise causes these units to remain or
28 become affordable to, and occupied by, extremely low, very low,
29 or low-income households, in the same proportions with respect
30 to household income level that exists or existed under the federal
31 regulatory agreements. If a unit satisfies the requirements of both
32 subparagraph (A) and this subparagraph, the city or county may
33 count the unit only once toward satisfying the requirements of
34 paragraph (1).

35 (C) Units affordable to, and occupied by, households earning
36 less than 30 percent of the median family income, including, but
37 not limited to, households that earn less than 30 percent of the
38 median family income who are occupants of transitional housing
39 where support services are regularly provided under contract or
40 farmworker housing. These units may be counted against a city or



county's low-income obligations at a rate of two low-income units for every unit affordable to, and occupied by, households earning less than 30 percent of the median family income.

(4) *A city in which at least 40 percent of the housing stock is more than 40 years old may count substantially rehabilitated residential units toward not more than 15 percent of the very low income and 15 percent of the low-income requirements of paragraph (1).*

(5) *If the California Tax Credit Allocation Committee determines that cities or counties in the greater Sacramento region that comprise 80 percent of the region's projected population growth have entered into a joint powers agreement or adopted an ordinance or other binding resolution to meet the requirements of this section prior to January 1, 2005, then this section shall, notwithstanding any other provision, only apply to those cities and counties.*

(b) Each city and each county in the greater Sacramento region shall prepare and submit to the California Tax Credit Allocation Committee, as defined in Section 50199.7 of the Health and Safety Code, an annual report and assessment of its compliance with subdivision (a), to be submitted not later than December 31, 2005, and December 31 of each subsequent year. This report shall be submitted on forms prepared by the California Tax Credit Allocation Committee and shall conclusively demonstrate the city's or county's compliance with subdivision (a), ~~and shall include, but not be limited to, the following information:~~

~~(1) The beginning and ending date of the one-year period described in the report.~~

~~(2) The total number of residential units for which building permits were issued in the jurisdiction during the reporting period, the parcel number for each residential unit counted toward this total, and an indication of whether the unit is also counted toward the total in paragraph (3).~~

~~(3) The total number of residential units for which building permits were issued in the jurisdiction that are counted toward the affordable housing requirements of subdivision (a).~~

~~(4) The total number of building permits issued to construct residential units affordable to low income households, the total number of building permits issued to construct residential units affordable to very low income households, and the parcel number~~

1 ~~for each of these units, and a copy of the regulatory agreement or~~
2 ~~recorded covenant related to that residential unit.~~

3 ~~(5) The total number of residential units that are being applied~~
4 ~~toward the requirements of paragraph (1) of subdivision (a)~~
5 ~~pursuant to each subparagraph of paragraph (2) of subdivision (a),~~
6 ~~the parcel number for each of these units, and a copy of the~~
7 ~~regulatory agreement or recorded covenant related to that~~
8 ~~residential unit.~~

9 ~~(6)(a).~~ For a city or county that chooses to meet the
10 requirements of subdivision (a) over a three year period, the report
11 shall also include a narrative description of how the jurisdiction
12 plans to meet the requirements over the three-year period.

13 (c) Copies of the report shall also be made available for the
14 general public at the city's or county's planning department, local
15 public libraries, and on its Web site, if any.

16 (d) With respect to each city and county within the greater
17 Sacramento region, the requirements of this section are in addition
18 to, and do not substitute for, any other affordable housing
19 requirements.

20 (e) No later than December 31, 2008, the California Tax Credit
21 Allocation Committee, described in Section 50199.7 of the Health
22 and Safety Code, shall report to the Legislature, for each county
23 and city in the greater Sacramento region that is subject to the
24 requirements of this section, the number of residential units
25 affordable to very low or low-income households for which
26 building permits were issued from January 1, 2004, to June 30,
27 2008, inclusive, and the number of residential units affordable to
28 very low or low-income households allocated to each county and
29 city for the same period pursuant to the Sacramento Council of
30 Government's regional housing needs assessment.

31 (f) For purposes of this chapter, the following definitions
32 apply:

33 (1) "Greater Sacramento region" means the region
34 encompassing the total combined area of the Counties of El
35 Dorado, Placer, Sacramento, Sutter, Yolo, and Yuba, excluding the
36 region defined in subsection (a) of Article II of Public Law 96-551
37 that is governed by the Tahoe Regional Planning Agency, as
38 described in Article III of Public Law 96-551.

39 ~~(2) "Substantial rehabilitation" means that a unit has had at~~
40 ~~least twenty-five thousand dollars (\$25,000) of rehabilitation~~

1 ~~construction costs excluding contractor profit, and contractor~~
2 ~~overhead, and~~

3 (2) “*Substantial rehabilitation*” has the same meaning as in
4 clause (iv) of subparagraph (A) of paragraph (2) of subdivision (b)
5 of Section 33413 of the Health and Safety Code, and that all of the
6 following requirements were met:

7 (A) The rehabilitation was carried out or caused to be carried
8 out with public funds.

9 (B) The city or county has provided or caused to be provided
10 relocation assistance pursuant to Chapter 16 (commencing with
11 Section 7260) of Division 7 of Title 1 to any occupants temporarily
12 or permanently displaced by, for, or in connection with the
13 rehabilitation activity, including, but not limited to, any activity or
14 activities that have resulted in or will result in displacement of any
15 and all residents of the dwelling or dwellings, including, but not
16 limited to, any code enforcement activity.

17 (C) The local government required that any displaced
18 occupants would have the first right to reoccupy the rehabilitated
19 units.

20 (D) That the rehabilitated units are affordable to ~~the same~~, and
21 *occupied by, the same or a lower* level of income residents that the
22 units were affordable to prior to rehabilitation.

23 (3) “Occupied” means that units required or caused to be
24 affordable and occupied for the longest feasible time, but not less
25 than the time requirements specified in subdivision (c) of Section
26 33413 of the Health and Safety Code for residential units, by those
27 with very low or low incomes as required in subdivision (a) as long
28 as these requirements do not conflict with financing source
29 requirements.

30 (4) “Extremely low income” has the same meaning as set forth
31 in Section 50106 of the Health and Safety Code.

32 (5) “Very low income” has the same meaning as set forth in
33 Section 50105 of the Health and Safety Code.

34 (6) “Low income” has the same meaning as set forth in Section
35 50079.5 of the Health and Safety Code.

36 65965.2. (a) Cities and counties in the greater Sacramento
37 region may establish a joint powers agency to be known as the
38 Greater Sacramento Regional Consortium. The consortium may
39 assist small communities to apply for state and federal housing
40 resources, cooperate with the federal Department of Housing and

1 Urban Development in programs for the use of federal HOME and
2 Small Cities Community Development Block Grant Program
3 funds, and assist in the creation of a multicounty mortgage revenue
4 bond authority.

5 (b) Notwithstanding any other provision of law, the
6 Department of Housing and Community Development shall
7 allocate HOME Investment Partnership Act funds authorized
8 pursuant to Section 50896 of the Health and Safety Code and
9 federal Small Cities Community Development Block Grant
10 Program funds authorized pursuant to Section 50825 of the Health
11 and Safety Code to the consortium, based on federal and state
12 allocation methodology, historical allocations to communities in
13 the region, and other factors determined by the department.

14 (c) The Department of Housing and Community Development
15 shall direct funding awards for the Multifamily Housing Program,
16 established pursuant to Section 50675 of the Health and Safety
17 Code, and the other appropriate housing programs administered
18 by the department, to the Greater Sacramento Regional
19 Consortium, and to regional entities that are subject to the
20 affordable housing production standard provided for in this
21 chapter, based on state allocation methodology, historical
22 allocations to communities in the region and other factors
23 determined by the department.

24

25 *Article 2. Housing Development Approvals*

26

27 65965.3. (a) *This article applies in each city and county that*
28 *is subject to the performance standard set forth in subdivision (a)*
29 *of Section 65965 and has failed to meet the performance standard*
30 *either on an annual basis, if the jurisdiction has chosen to meet the*
31 *standard annually, or over a three-year period if the jurisdiction*
32 *has chosen to meet the standard set forth in subdivision (a) of*
33 *Section 65965. From January 1, 2004, to December 31, 2007,*
34 *inclusive, this article applies in each city and each county that is*
35 *subject to the standard set forth in subdivision (a) of Section 65965*
36 *and did not meet, as evidenced by a report consistent with the*
37 *report described in subdivision (b) of Section 65965, the*
38 *equivalent of at least fifty percent of the standard during the period*
39 *from January 1, 1999, to January 1, 2004, inclusive, had the*
40 *standard been in effect*



(b) Any city or county may elect, by resolution of its governing body, to make this article, or any section within this article, applicable to residential development within its jurisdiction. Applications for low- and moderate-income residential development projects in the greater Sacramento region that ~~meet the~~ would count toward the affordable housing requirements of subdivision (a) of Section 65965 and are consistent with the applicable general plan land use designation, zoning ordinance, and development standards, shall be accepted and approved or disapproved by the administrator designated by the planning agency to grant permits, ~~without a hearing; without a conditional use permit or planned unit development permit.~~

(b) For the purposes of this chapter “residential” means a use consisting of either:

(1) Residential units only.

(2) Mixed-use developments in which nonresidential uses are limited to commercial uses serving the neighborhood and to the first floor of buildings that are at least two stories *and in which residential uses includes parking and other facilities serving residents of the development project.*

(c) For purposes of this chapter, a residential development project shall be deemed “consistent with the applicable general plan land use designation, zoning ordinance, and development standards” only if the development project is consistent with all of the following:

(1) Applicable development standards, including site, ~~construction, design, and use standards applied in a manner consistent with subdivision (e) of Section 65915;~~ *construction, and design standards.*

(2) Any applicable general plan, specific plan, and local coastal ~~program, including any mitigation measures required by a plan or program pursuant to the California Environmental Quality Act (commencing with Section 21000 of the Public Resources Code);~~ *program,* as they existed on the date that the application was deemed complete.

(3) Any applicable zoning ordinance, as that zoning ordinance existed on the date the application was deemed complete, except that consistency with the zoning *or specific plan* of the project property shall not be required if the project property has not been rezoned to conform with the general ~~plan.~~

1 ~~(4) plan or the specific plan does not conform with the general~~
2 ~~plan.~~

3 (4) Any mitigation measures required by a plan or program
4 pursuant to the California Environmental Quality Act (Division 13
5 commencing with Section 21000) of the Public Resources Code).

6 (d) For purposes of this chapter “low- and moderate-income
7 residential development projects” means housing affordable to
8 very low, low- and moderate-income households as defined in
9 paragraph (2) of subdivision (h) of Section 65589.5.

10 ~~65965.4.—~~

11 65965.5. (a) Permits to develop at least 10 percent of the
12 multifamily zoned sites identified in the housing element of each
13 jurisdiction in the greater Sacramento region shall be provided by
14 right and conditioned upon density and development standards to
15 accommodate and facilitate the feasibility of housing for lower
16 income households, with at least one-half of those sites having
17 density and development standards to accommodate very low
18 income households. The jurisdiction shall specifically identify the
19 sites where multifamily zoned sites will be allowed by right and
20 describe how the permit processing procedures address the
21 requirements of this section. The local government shall report on
22 the development status of each site identified in the annual
23 implementation report required pursuant to Section ~~65943~~ 65400.
24 For purposes of this section, the phrase “by right” shall mean the
25 use does not require a conditional use or planned unit development
26 ~~or other discretionary permit. permit.~~

27
28 *Article 3. Incentives*
29

30 ~~65965.5.—(a)—~~

31 65965.6. Each city or county in the greater Sacramento region
32 and any city or county outside the Sacramento region, that meets
33 the requirements of Section 65965 shall receive priority eligibility
34 in the award of ~~funds from~~ competitive state grants or loans for
35 infrastructure projects, ~~including but not limited to parks, water,~~
36 ~~wastewater, and transportation projects planning, commercial or~~
37 ~~industrial development, or other economic development activities,~~
38 as defined by the Governor’s Office of Planning and Research.

39 ~~(b) Cities and counties in the greater Sacramento region that~~
40 ~~fail to meet the requirements of Section 65965 shall not receive~~

1 priority eligibility in the award of competitive state grants or loans.
2 Any applicant who proposes to construct a low and
3 moderate-income housing development, within a city or county
4 within the greater Sacramento region that fails to meet the
5 requirements of Section 65965 and whose application is either
6 denied or approved with conditions that in his or her judgment
7 render the provision of housing infeasible, may appeal the decision
8 of the city, county, or city and county to the California Tax Credit
9 Allocation Committee established pursuant to Section 50199.7 of
10 the Health and Safety Code.

11 ~~65965.6. (a) In any action to challenge the validity of a~~
12 ~~decision by a city or county that meets the affordable housing~~
13 ~~requirements of Section 65965 to zone land consistent with its~~
14 ~~housing element, the decision shall be upheld if it is consistent~~
15 ~~with, and in promotion of, the statewide goal of providing a~~
16 ~~sufficient supply of decent housing to meet the needs of all~~
17 ~~residents of this state.~~

18 ~~(b)–~~

19 ~~65965.7. In any action to challenge the approval by a city or~~
20 ~~county, whether or not it is within the greater Sacramento region,~~
21 ~~that meets the affordable housing requirements of Section 65965~~
22 ~~of a development project for persons or households of low and~~
23 ~~moderate income by a city or county that meets the affordable~~
24 ~~housing requirements of Section 65965, the approval shall be~~
25 ~~upheld if it is consistent with, and in promotion of, the statewide~~
26 ~~goal of providing a sufficient supply of decent housing to meet the~~
27 ~~needs of all residents of this state.~~

28 ~~(c) If a court finds that the decision or approval is consistent~~
29 ~~with, and in promotion of, the statewide goal of providing a~~
30 ~~sufficient supply of decent housing to meet the needs of all~~
31 ~~residents of this state, the court shall award to the city or county~~
32 ~~reasonable costs and reasonable attorney's fees.~~

33 ~~65965.7.—project with units that would count toward the~~
34 ~~affordability requirements of subdivision (a) of Section 65965, the~~
35 ~~approval shall be upheld unless a court finds by clear and~~
36 ~~convincing evidence that the project would have been disapproved~~
37 ~~for a reason described in paragraph (2), (3), or (6) of subdivision~~
38 ~~(d) of Section 65589.5. If a court upholds the approval, the court~~
39 ~~shall award to the city or county reasonable costs and reasonable~~
40 ~~attorneys' fees.~~

Article 4. Contingency and Sunset

65965.8. *The Secretary of the Business, Transportation, and Housing Agency may reduce, suspend, or waive the requirements of Article 1 (commencing with Section 65965) or Article 2 (commencing with Section 65965.3) in any year in which he or she makes a finding, based on clear and convincing evidence, that either of the following conditions makes the requirements unattainable for cities and counties in the greater Sacramento region:*

(a) *A natural disaster affecting the region, as defined in Section 8680.4.*

(b) *A substantial reduction in state or federal housing funding available to the region.*

65965.9. This chapter shall remain in effect only until January 1, ~~2009~~ 2010, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, ~~2009~~ 2010, deletes or extends that date.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 1 of Article IV of the California Constitution due to the unique fiscal, jurisdictional, and public service dynamics in the greater Sacramento region.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.